

**Preston|Gates|Ellis &
Rouvelas|Meeds LLP**

MARTIN L. STERN
DIRECT DIAL: (202) 662-8468

June 7, 2002

FILED ELECTRONICALLY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation in CS Docket No. 01-290

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the Broadband Service Providers Association (BSPA) submits this notice of an *ex parte* presentation in the above-captioned proceeding.

On June 6, 2002, John D. Goodman (Executive Director, BSPA), and myself (representing BSPA) met with Stacy R. Robinson of Commissioner Abernathy's office to discuss the extension of the sunset provision applicable to the prohibition on exclusive contracts contained in Section 628(c) of the Communications Act of 1934, as amended. We also discussed issues involving access to terrestrially-delivered programming. A summary of the presentation is attached hereto, and was provided to Ms. Robinson at the meeting.

Respectfully submitted,

**BROADBAND SERVICE PROVIDERS
ASSOCIATION**

By: /s/
Martin L. Stern
Preston Gates Ellis &
Rouvelas Meeds LLP
1735 New York Ave., NW, Suite 500
Washington, DC 20006
(202) 628-1700
*Attorneys for the Broadband Service
Providers Association*

Enclosure
cc: Stacy R. Robinson

Broadband Service Providers Association (BSPA)
Program Access Sunset Extension And Access To Terrestrial Programming

- BSPA supports extension of the Sunset Provision of Section 628(c)(5) applicable to exclusive contracts.
 - Competitive access to programming is critical and requires continued protection.
 - Current industry consolidation amplifies potential issues.
- Fair and equal access to programming is critical element to effective long term MVPD competition, key policy goal of 1992 Cable Act and Telecom Act of 1996.
 - Clearly recognized for satellite-delivered programming, as reflected in Section 628(c)(2) (“minimum content of regulations”).
 - Equally important for programming delivered to MVPDs via other modes, as demonstrated by numerous parties.
- Protections afforded by Program Access provisions should be technology-neutral, and should not depend on programming’s mode of delivery to MVPDs.
 - Sections 628(a) and (b) were intended as general principle to protect competition.
 - Terrestrial delivery is a major technology shift that has occurred since the original provisions were passed.
 - Distribution and delivery technologies will continue to migrate. Emerging technologies that may need consideration may include VOD, ITV, and Streaming Video.
- Differing views exist as to whether FCC has current authority to apply the Program Access Rules to terrestrial-delivered programming, though BSPA believes that Section 628(b) can fairly be read to cover the denial of programming by cable-affiliates, regardless of delivery mode, where purpose or effect is to significantly hinder or prevent MVPD’s ability to compete.
 - The FCC has expressed concern about extending its authority.
 - Some congressional leaders feel authority already exists.
 - Both have acknowledged concern over the potential anti-competitive issues.
- FCC in its Exclusivity Sunset Report and Order should acknowledge these continuing issues and establish framework for their resolution.
 - Continuing industry consolidation and potential opportunities for companies with significant market power to limit competition through exclusive or discriminatory access to programming.
 - The need, from policy perspective, for Program Access rules to be independent of technology employed for program delivery to distributors.
 - The potential need for Congressional clarification of the broader intent of the current Section 628 provisions and the FCC’s authority to protect MVPD competition by requiring access to cable-affiliated programming, regardless of mode of delivery.
 - The continued importance of sustaining and developing competition in the MVPD market beyond the current dominant incumbent MSO’s and satellite providers.